

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of Section 309(j))	DOCKET FILE COPY ORIGINAL
of the Communications Act -)	
Competitive Bidding)	PP Docket No. 93-253
)	
Amendment of the Commission's)	
Cellular PCS Cross-Ownership Rule)	GN Docket No. 90-314
)	
Implementation of Sections 3(n) and 332)	
of the Communications Act)	
Regulatory Treatment of Mobile Services)	GN Docket No. 93-252

COMMENTS OF TELECORP, INC.

Telecorp, Inc. ("Telecorp"), a qualifying small business committed to participating in the entrepreneurs' block auction for personal communications service ("PCS") licenses, hereby submits its comments on the *Further Notice of Proposed Rule Making* in the above-captioned proceeding.¹ In light of the recent Supreme Court decision in *Adarand v. Peña*,² the *Further Notice* proposes to modify the Commission's competitive bidding rules for the

¹ *Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, FCC 95-263 (June 23, 1995) (hereinafter "*Further Notice*").

² 63 U.S.L.W. 4523 (U.S. June 12, 1995).

C block auction for PCS licenses by eliminating all race- and gender-based provisions.

Specifically, the *Further Notice* proposes to:

- Amend Section 24.709 of the Commission's Rules to make the 50.1/49.9 percent "control group" equity structure available to *all* entrepreneurs' block applicants;
- Amend Section 24.720 of the Commission's Rules to eliminate the exception to the affiliation rules that excludes the gross revenues and total assets of affiliates controlled by minority investors who are members of an applicant's control group;
- Amend Section 24.711 of the Commission's Rules to provide for three installment payment plans for entrepreneurs' block applicants that are based solely on financial size. In particular, the small business installment payment plan would reflect the terms previously available to minority- or women-owned small businesses;
- Amend Section 24.712 of the Commission's Rules to provide for a 25 percent bidding credit for small businesses only;
- Amend Section 24.204 of the Commission's Rules to make the 40 percent cellular attribution threshold applicable to ownership interests held by small businesses and rural telephone companies, or to ownership interests held by investors in broadband PCS applicants/licensees that are small businesses; and
- Amend Section 20.6 of the Commission's Rules to make the 40 percent attribution threshold applicable only to ownership interests held by small businesses and rural telephone companies.³

Telecorp supports these measures and agrees with the Commission's conclusion that C block bidders, including women and minority bidders, will be best served by the adoption of provisions based solely on economic size. In this regard, Telecorp believes that public policy dictates the elimination of *all* distinctions based on gender and race, including the

³ *Further Notice* at ¶ 3.

affiliation exception for Indian tribes and Alaska Regional or Village Corporations.⁴

Telecorp believes the Commission's observation that "[t]he likely delays in market entry from doing otherwise would thwart Congress's directive to disseminate PCS licenses quickly so competitive service to the public can begin forthwith" applies equally to these proposed exceptions.⁵ Indeed, as Commissioner Barrett has recognized, it is somewhat ironic that the FCC "hurr[ies] to erase the race- and gender-based preferences that were developed for the C block rules, but fail[s] to recognize that this one provision for Native Americans held out as statutory, should arguably also be considered race-based as well."⁶ By leaving this preference undisturbed, the Commission invites legal challenges from affluent minority and women bidders who are competing against Native American applicants without the benefit of such an exception. Unless the playing field for all small businesses is level and all preferences based on race and gender are eliminated, constitutional concerns regarding the C block auction will remain, placing the winners of such licenses at great risk and inhibiting their ability to compete effectively with existing wireless carriers such as A and B block licensees and "cellular and enhanced SMR carriers, who have a substantial head start in the market."⁷

⁴ 47 C.F.R. § 24.720(l)(11)(i).

⁵ *Further Notice*. at ¶ 9.

⁶ Statement of Commissioner Andrew C. Barrett at p. 4.

⁷ *Id.* at ¶ 8.

For these reasons, Telecorp supports the proposals contained in the *Further Notice* but believes the public interest best would be served by elimination of all race- and gender-based preferences in the C block auction.

Respectfully submitted,

TELECORP, INC.

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